

04 CIV. 1564

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

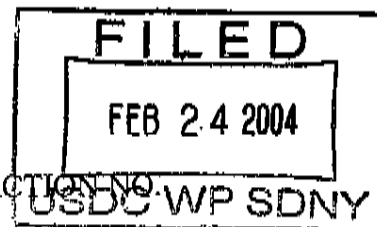
KONINKLIJKE PHILIPS ELECTRONICS N.V.

Plaintiff,

-against-

APEX DIGITAL, INC.,

Defendant.



ROBINSON

DEFENDANT APEX DIGITAL, INC.'S NOTICE OF REMOVAL

TO THE CLERK FOR THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE that Defendant Apex Digital Inc. ("Apex"), by its undersigned counsel, hereby removes the action styled and captioned *Koninklijke Philips Electronics N.V. v. Apex Digital, Inc.*, Civil Action No. 03-20717, from the Supreme Court of the State New York, County of Westchester (the "Supreme Court"), to the United States District Court for the Southern District of New York, White Plains Division, pursuant to 28 U.S.C. § 1441(a) which provides for removal of civil actions that satisfy the jurisdictional requirements under 28 U.S.C. § 1332(a), and states as follows:

1. On or about December 30, 2003, Plaintiff Koninklijke Philips Electronics N.V. ("Philips") commenced this action by filing a Motion for Summary Judgment in Lieu of Complaint (the "CPLR 3213 action") in the Supreme Court of the State of New York, County of Westchester.

2. Philips served a copy of the CPLR 3213 action and a summons thereto on January 26, 2004. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the CPLR 3213 action and summons thereto and all other documents relating to this action in the County Clerk's records, are attached hereto as Ex. A.

3. The CPLR 3213 action is action in which Philips seeks judgment against Apex in the amount of \$3,782,412.85, plus interest, the alleged balance owing on a promissory note.

DIVERSITY JURISDICTION

4. Apex is a corporation organized and existing under the laws of the State of California and having its principal place of business in Ontario, California. Therefore, for purposes of 28 U.S.C. § 1332(c)(1), Apex is a citizen of California.

5. Philips is a Dutch corporation having an office and principal place of business in Eindhoven, The Netherlands.

6. This court has original subject matter jurisdiction over the present action pursuant to 28 U.S.C. § 1332(a)(2), in that it is a civil action arising between the citizen of a State and citizens or subjects of a foreign state and where the matter in controversy exceeds the value of \$75,000, exclusive of interests and costs.

7. Philips's cause of action is based on the alleged breach of a promissory note executed by Apex and Philips, a true and correct copy of which is attached as Ex. A to the affidavit submitted in support of the CPLR 3213 action.

OTHER REMOVAL REQUIREMENTS

8. Pursuant to 28 U.S.C. § 1446(d), the Notice of Filing Removal together with a copy of this Notice of Removal, is being served on Plaintiff's counsel of record,

Gerrard R. Beeney, Elizabeth Speidel and Edward D. Johnson, of Sullivan & Cromwell LLP.

9. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal and the Notice of Filing Removal are being filed with the Clerk of the Supreme Court of New York, County of Westchester.

10. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b), as Apex obtained a copy of the CPLR 3213 action on January 26, 2004.

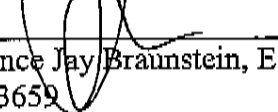
11. Notwithstanding this Notice of Removal, Apex does not waive any available defenses pursuant to Federal Rule of Civil Procedure 12(b), and preserves the right to raise appropriate all defenses and objections in a timely manner in its Answer or responsive pleadings.

WHEREFORE, Apex hereby removes this action from the Supreme Court of the State of New York, County of Westchester to the United States District Court for the Southern District of New York, White Plains Division.

Dated: February 24, 2004

Respectfully Submitted

BRAUNSTEIN & ZUCKERMAN, ESQS.
Attorneys for Defendant

By: 
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Counsel for Defendant Apex Digital, Inc.


CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2004, a true and accurate copy
of the foregoing Notice of Removal was delivered to the following by First Class:

Gerrard R. Beeney
Elizabeth Speidel
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498

Edward D. Johnson
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Attorneys for Plaintiff
Koninklijke Philips Electronics N.V.



Lawrence Jay Braunstein, Esq.
LJB #3659